**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

Cr. Appeal No.207 Of 2000.

Date of decision: July 3rd, 2007.

State of Himachal Pradesh. .... Appellant.

Vs.

Surender Pal & Another. .... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl. Advocate General.

For the respondents: Mr. Naresh Kumar Thakur, Advocate.

Surinder Singh, J (oral):

By means of the instant appeal, the State has assailed the judgment of acquittal passed by the Judicial Magistrate, in case No.56-III/96, decided on 17.5.1999.

It is contended that the learned trial court did not appreciate the evidence of the prosecution in the right perspective, but at the same time, as stated unrealistic standard to evaluate the direct and cogent prosecution evidence. In nutshell, it is contended that the testimony of the prosecution witnesses were brushed aside without any proper material.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

The leave to appeal was granted on 9.5.2000 by this court and now the matter has been finally heard.

According to Shri V.K. Verma, learned Additional Advocate General, if the evidence of the prosecution is appreciated properly then there is a ground for the conviction of the respondents for the offences charged. Learned Additional Advocate General also took me through every bit of the details of the prosecution evidence and prayed for the acceptance of the appeal. On the other hand, Mr.N.K. Thakur, learned counsel for the respondent has supported the impugned judgment.

The factual matrix of this case giving rise to the instant appeal, as alleged by the prosecution are that during the intervening night of 28th and 29th of February, 1996, ASI Om Parkash was on patrolling duty with Head Constable Akshay Kumar and Constable Surjit Singh at Amb Chowk. A secret information was received by ASI Om Parkash at about 2.30 a.m. that the wood of **Tuni**, **Simbal** and **Shehtoot** are being transported without any permit in a truck bearing No.HIU-4440 from the side of Katohar Kalan. On this, he formed a raiding party and included Jai Ram, Deputy Ranger (PW1). At about 2.45 a.m., the aforesaid truck came near Amb Chowk and found that it was being driven by respondent Chander Parkash and respondent Surender Pal was its occupant. On search, the police found 15-20 quintals of Shehtoot wood, 14 logs of Simbal and 21 logs of Tuni. No permit or challan was produced by the

respondent, but in turn, the respondents had informed the police that the said timber was purchased from one Smt. Samla Devi of village Katohar Kalan. The process of seizing the timber was started. A rukka was sent to the police station, on the basis of which FIR No.35/1996 was registered. To this effect, rukka bears endorsement Ext.PW5/B. The police prepared site plan Ext.PW6/C. During the investigation, took into possession the receipt Ext.PW6/A, issued by Smt. Sawna Devi vide memo Ext. Memo Ext.PW6/E, in the presence of PW Uttam Chand and PW Tarsem Lal. The truck was taken into possession vide memo Ext.PW1/A. Timber was got unloaded in the Police Station and its measurement was taken. To this effect, Memo Ext.PW1/B was prepared. Police recorded the statements of the witnesses. Vide order dated 6.6.1997, at the request of police, the timber was ordered to be auctioned, after retaining 2 logs of Simbal, 2 logs of Tuni and 10 Kgs wood of Shehtoot, as a sample and sale proceeds were ordered to be deposited in the court. After completing the investigation, the case was presented in the court for trial under section 41 and 42 of the Indian Forest Act read with Section 77 of the Motor Vehicles Act. Notice of accusation was put to the respondents only under Section 41 and 42 of the Indian Forest Act. The allegations were denied and they claimed trial of the case.

To prove its case, prosecution examined PW1 Jai Ram, Deputy Ranger, PW2 ASI Akshay Kumar, PW3 Uttam Chand, PW4 Tarsem Lal, PW5, Sansar Chand, Inspector and PW6 ASI Om Parkash. Smt. Samla Devi was not included in the list of witnesses and she was allowed to be examined as per the provision of Section 311 of the Code of Criminal Procedure, at the request of the prosecution. Respondents were also examined under Section 313 of the Code of Criminal Procedure. Their case was denial simplicitor. No evidence was led.

After appreciating the evidence of the prosecution and upon hearing the learned counsel for the parties, the learned trial court acquitted the respondents, firstly, on the ground that the very genesis of the prosecution case that the timber was purchased by respondent Surender Pal from Smt. Samla Devi was not proved. Samla Devi aforesaid has denied the receipt Ext.PW6/A and having sold the timber aforesaid to the respondents. She has stated that she did not know the respondents at all. Though the signatures on receipt Ext.PW6/A by marginal witness Uttam Chand PW3 have been admitted, but according to him, he had signed the same at the instance of police. These witnesses did not support the case of the prosecution at all. Secondly, another witness Gurbax Singh mentioned in the aforesaid receipt has not been examined nor his name found mention in the list of witnesses of the prosecution. Memo Ext.PW6/E is alleged

to have been signed by Tarsem Lal PW4. He also did not support the case of the prosecution. Thirdly, when ASI Om Parkash is alleged to have received the information at 2.30 a.m. on 29th February, 1996 then how and under what circumstances Deputy Ranger Jai Ram (PW1) was called at 9.30 p.m. as stated by him (PW1), which goes against the case of the prosecution. Whereas, ASI Om Parkash aforesaid has stated that Constable Surjit Singh was sent to call for Jai Ram at about 2.30 a.m., Surjit Singh has not been cited as a witness. On top of it, ASI Akshay Kumar (PW2) has given another version that Jai Ram, Deputy Ranger was called at 1.30 a.m. All this makes the case fishy more specifically in view of the deposition made by PW1 Jai Ram. Fourthly, the case property Exts.P1 to P3, which was shown to PW1 Jai Ram during the trial of the case has admitted that this was totally different with the description given in the memo Ext.PW1/B vide which the alleged timber was taken into possession, nor it found any marking, whereas, ASI Akshay Kumar (PW2) has deposed that the timber in question was having the marking. Fifthly, when the truck was being unloaded, PW1 Jai Ram has stated that he went to change his dress, on coming back, some of the timber was already unloaded and at that time nobody was found in the police station and further that during the night, when the alleged truck was intercepted, the Chowkidar was present near Amb Chowk, who was not associated to lend strength of the

case of the prosecution. Thus, in view of the fact that the case has not been supported by the independent witnesses, as discussed above and the versions of the official witnesses has been contradictory, the respondents were entitled to the benefit of doubt.

I have reappraised the evidence on record and in order to find out whether the reasoning given by the trial court is correct. On going through the record of the case, I do find that the learned trial court has based its findings on the evidence on record, which cannot be said to be perverse. Since my conclusion, on scanning the evidence of the prosecution remains the same, therefore, the appeal merits dismissal, which is accordingly dismissed.

The respondent is hereby discharged of his bail bonds, entered upon at any time during the proceedings of this case. The matter stands accordingly disposed of.

July 3rd, 2007. **(Surinder Singh)**
(PDS) **Judge**.